COURT OF APPEALS
DECISION
DATED AND FILED

July 19, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP162 **Cir. Ct. No. 2011FO350**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

COUNTY OF JACKSON,

PLAINTIFF-APPELLANT,

V.

JONI L. BORNTREGER,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Jackson County: THOMAS E. LISTER, Judge. *Reversed and cause remanded.*

¶1 BLANCHARD, J.[1] Jackson County appeals a judgment dismissing a civil forfeiture action against Joni L. Borntreger for failure to obtain a zoning

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(g) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

permit from the County for construction of a saw mill on his property before building the saw mill. There is no dispute that Borntreger violated the County's zoning ordinance by failing to obtain the zoning permit in advance of construction. However, the circuit court dismissed the forfeiture action on the grounds that Borntreger proved that he had a sincerely held religious belief that would be burdened by application of the zoning ordinance at issue and that the County failed to prove that the ordinance is based on a compelling state interest sufficient to justify that burden. This court reverses the judgment of dismissal after concluding that the court lacked a sufficient basis from which it could conclude that Borntreger had a sincerely held religious belief that would be burdened by enforcement of the ordinance.

BACKGROUND

¶2 Jackson County Zoning Administrator Terry Schmidt cited Borntreger in June 2011 for a violation of Section 17.17 of the Jackson County Zoning Ordinance.[2] The citation alleged that in November 2010 Borntreger

[2] Borntreger does not contest that his conduct placed him in violation of the terms of the JACKSON COUNTY, WIS., ZONING ORDINANCE, § 17.17 (2009), which provides as follows:

> **17.17 ZONING PERMIT**. A Zoning Permit (Land Use Permit) shall be required for all structures except for those in Sub (3).
>
> (1) Applications for a zoning permit shall be made in duplicate to the Zoning Administrator on forms furnished by the Zoning Administrator and shall include the following where applicable:
>
> (a) Names and address of the applicant, owner of the site, architect, professional engineer or contractor.

(continued)

(b) Description of the subject site by lot, block and recorded subdivision or by metes and bounds; address of the subject site; type of structure; existing and proposed operation or use of the structure or site; number of employees; and the zoning district within which the subject site lies.

(c) Plat of survey prepared by a registered land surveyor showing the location, boundaries, dimensions, elevations, uses and size of the subject site; existing and proposed structures; existing and proposed easements, streets and other public ways; off-street parking, loading areas and driveways; existing highway access restrictions; and existing and proposed street, side and rear yards. In addition, the plat of survey shall show the location, elevation and the use of any abutting lands and their structures within 40' of the subject site.

(d) When municipal sewerage service is not available, the owner shall certify in writing that satisfactory, adequate and safe water and sewage disposal is possible on the site in accordance with applicable local, County and State regulations.

(e) Additional information as may be required by the appropriate body of the County.

(2) A zoning permit shall be granted or denied in writing by the Zoning Administrator within 30 days. The permit shall expire within 6 months unless substantial work has commenced. Any permit issued in conflict with the provisions of this chapter shall be null and void.

(a) The fee for the Land Use Permit is established by the Zoning and Land Information Committee and can be amended from time to time. The current fee can be viewed in Appendix A of this ordinance.

(b) The Jackson County Zoning Department staff shall have access to property during reasonable business hours for the purpose of performing on-site verifications for the issuance of the Land Use Permit.

(continued)

constructed a structure that was 125 square feet or greater without first having obtained a required zoning permit for that construction.

¶3 The record reflects that on July 25, 2011, Borntreger filed with the court a one-page, handwritten submission ("the Borntreger submission") that purported to reflect a simple schematic drawing of the dimensions of the saw mill, with the following accompanying text, in its entirety:

> Hello,
>
> This is the size of the building[—]the drawing here [with arrow to drawing].
>
> The reason [for] me not wanting to deal with permits[3] and so forth is [the following:]
>
> My Dad [and] Grandpa or [forefathers] use[d] to do this like this. They did not have to [go] through all these permits and stuff. All you had to do was … [d]raw a print like this and send it in or go to the court house and report it

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> (3) A zoning permit shall not be required.
>
> (a) For any accessory building 125 sq. feet or less in size.
>
> (b) See 17.60 (1).

JACKSON COUNTY, WIS., ZONING ORDINANCE, § 17.60 (2009) provides in relevant part:

> **17.60 HEIGHT.** The maximum height limitations provided elsewhere in this chapter may be exceeded in accordance with the following standards:
>
> (1) Agricultural structures, such as barns, silos and windmills shall not exceed in height twice their distance from the nearest lot line. A Land Use Permit is not required for the construction of corn cribs, silos or grain bins. The height restriction however does apply.

[3] Although Borntreger used the plural, "permits," the forfeiture at issue alleged failure to obtain a single permit.

> within a year. And that is what I want to stay with[,] is with what my [forefathers] left back for us as good examples.
>
> This is why I don't want permits. [underlined four times]
>
> If you need more information on the building, I can give more.
>
> [signed] Joni L. Borntreger

¶4 At a bench trial on December 28, 2011, the County called one witness, Zoning Administrator Schmidt. Schmidt testified that Borntreger constructed a sawmill on his property in the Town of Cleveland without having first obtained the zoning permit required under JACKSON COUNTY, WIS., ZONING ORDINANCE, § 17.17 (2009), which required payment of a $100 permit fee. The County sent Borntreger three letters, one certified, explaining the need for the permit and potential penalties if it was not issued, but received no responses to those communications. Schmidt testified that in 2006, Borntreger had obtained a conditional use permit for the operation of a sawmill on the property.

¶5 Schmidt testified that the "main reason" for the zoning permit requirement for a structure of the type Borntreger built "is to [e]nsure setbacks are met from the road, to [e]nsure that they're not built within the town right-of-way, and setbacks are met from property lines." In fact, the sawmill met the required setbacks, and the only zoning law violation was the failure to obtain a zoning permit.

¶6 Borntreger's cross-examination of Schmidt consisted, in its entirety, of a request that Schmidt read aloud the text from the Borntreger submission. When the court asked if he wanted to make any additional statements, Borntreger responded, "[n]ot really more than just what's on that paper," apparently referring to the Borntreger submission. The only defense Borntreger raised was the idea

that, as the court characterized it, "he beli[eves] that these types of permits should not be required and that in the past they were not required by his forefathers."

¶7 The circuit court ruled immediately from the bench. The court initially imposed a $100 forfeiture, after observing that "Mr. Borntreger has not raised a religious objection or exception which would result in the burden of proof" shifting to the County to provide a compelling state interest in requiring the permit.

¶8 After the court asked if Borntreger could pay the $100 forfeiture within sixty days, a person identifying herself as Donna Douglas addressed the court. Douglas said she was attending the court proceeding as "a friend of the Amish today." Douglas added the following:

> I have been also looking at some of these cases, just looking at some of the things going on in New York right now and some of the questions that maybe they're not able to articulate is that, part of the reason they built as their forefathers did is that actually [it] is part of their faith, is part of their religion to do things simple; and not always have conformed to the way society changes. And you know, sometimes all these things make things more complicated, and that is part of the reason why they don't sign building permits. It actually is related to their religion, but I see maybe he didn't articulate that as well as he could have.

¶9 Borntreger then made a statement suggesting that he had previously obtained a building permit after a building burned to the ground, and that he regretted that he had done that. This statement did not include any reference to religious beliefs or practices.

¶10 The court stated that it was not persuaded by the statements of Borntreger and Douglas or the Borntreger submission.

> If I had received testimony from an expert on the Amish religion or was provided with proof through a religious document that established that that was the rationale for Mr. Borntreger, it might be different, but all I can do is act on what is before me in a giv[en] proceeding.

The court returned to the topic of when Borntreger could pay the forfeiture.

¶11 In back-and-forth discussion that followed, the court, Douglas, and Borntreger seemed to agree that Borntreger would pay the $100 application fee, sit down with a county official for approximately five minutes to provide the information necessary for the application, would not be required to sign any document, and the citation would be dismissed. Borntreger suggested that he could go along with this proposal, presumably without violating his religious beliefs.[4]

¶12 At this point, after it appeared the parties and court had reached an agreement, the transcript reflects the following:

> UNIDENTIFIED: I think he'd rather not sign a permit.
>
> THE COURT: He will not have to sign a permit.
>
> UNIDENTIFIED: On this application, seems to me that applications will just follow from one to another and we don't really—really, we don't—I've got from the scripture from Romans here: I beseech you therefor[e], brethren, by the mercies of God, that you present your bodies a living example[,]

[4] This court declines to resolve this appeal on the ground that, with this statement, Borntreger appeared to agree that he could comply with the permit application requirements in a manner consistent with his religious beliefs. This court does not rest on this ground because the County does not make an argument to this effect, Borntreger was not represented by counsel at trial, and the circuit court appears to have determined that, despite Borntreger's apparent concession, the unidentified speaker accurately conveyed Borntreger's sincere religious objections as encompassing more than an objection to providing a signature.

> holy[,] and acceptable under God, which [is your] reasonable service. And be not conformed to this world: but [be] transformed by the renewing of your mind, that you may prove what is good, and acceptable, perfect will of God; and that's what we try. [This i]s what we believe in and with all the permits that are coming up we got to draw a line, and it's going to affect our establishment of our order, and that's our guide, what we go by. This is affecting our religion. Just goes from one step to another.

The unidentified speaker also quoted the text of the First Amendment to the United States Constitution,[5] and added, "[t]hat's our concerns, and we believe in the Constitution, what's written up. And these ordinance and requirements, can you show us law that that is law or it's just ordinance and requirements? I guess that's my concern."

¶13 After the County declined an invitation from the court to "question Miss Douglas or the gentleman that just spoke," the court concluded that it had "now been presented with a religious objection … raised by an elder." The court characterized the objection as follows: "[T]hey do not believe that they necessarily must conform to every regulation, ordinance, law, and standard established by the other society." The court also concluded that the County had

[5] The First Amendment to the United States Constitution provides in pertinent part: "Congress shall make no law … prohibiting the free exercise [of religion]." U.S. CONST. amend. I.

failed to demonstrate a compelling interest in requiring a zoning permit "under the facts of this case," and therefore "the Court must defer to the religious objection."[6]

DISCUSSION

I. Applicable Law

A. Wisconsin Protection of Freedom of Conscience

¶14 The only constitutional authority cited on behalf of Borntreger in the circuit court was the First Amendment to the United States Constitution. However, because some of the statements made by him or on his behalf in that court or on appeal might be construed as also implicating the relevant provision of the Wisconsin Constitution, this court will consider the Wisconsin provision. Article I, section 18 of the Wisconsin Constitution provides:

> **Freedom of worship; liberty of conscience; state religion; public funds**.... The right of every person to worship Almighty God according to the dictates of conscience shall never be infringed; nor shall any person be compelled to attend, erect or support any place of worship, or to maintain any ministry, without consent; nor shall any control of, or interference with, the rights of conscience be permitted, or any preference be given by law to any religious establishments or modes of worship; nor shall any money be drawn from the treasury for the benefit of religious societies, or religious or theological seminaries.

"The Wisconsin Constitution offers more expansive protections for freedom of conscience than those offered by the First Amendment." ***Noesen v. Dep't. of Regulation & Licensing***, 2008 WI App 52, ¶25, 311 Wis. 2d 237, 751 N.W.2d

[6] Having decided that the County failed to demonstrate a compelling interest, the court did not address the question of whether the requirements at issue are the least restrictive means of furthering any such interest.

385. Accordingly, if Borntreger's asserted defense to the zoning violation fails under the Wisconsin Constitution, then it necessarily fails under the First Amendment.

¶15 This court explained in ***Noesen*** its approach to a claim that a state law violates an individual's freedom of conscience:

> [T]he challenger must prove (1) that he or she has a sincerely held religious belief, (2) that is burdened by application of the state law at issue. Upon such a showing, the burden shifts to the state to prove (3) that the law is based in a compelling state interest, (4) which cannot be served by a less restrictive alternative. This test is strictly applied; the burden cannot be generic but must be related to the exercise of a religious belief. However, the United States Supreme Court has "never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate."

Id. (citations omitted).

B. Standard of Review

¶16 Although the parties differ on the question of whether relevant facts were presented, there are no contested facts. This appeal involves the interpretation of the state constitution, which is a question of law that this court decides de novo. *See* ***State v. Hamdan***, 2003 WI 113, ¶19, 264 Wis. 2d 433, 665 N.W.2d 785. Similarly, whether the evidence, construed most favorably to the defendant, is sufficient to support a finding that an affirmative defense applies is a question of law the court reviews de novo. *See* ***State v. Giminski***, 2001 WI App 211, ¶11, 247 Wis. 2d 750, 634 N.W.2d 604.

C. Analysis

¶17 For reasons explained below, it is necessary for this court to address only the first half of the test described in ***Noesen***, because the record before the circuit court was insufficient to establish that Borntreger held a sincerely held religious belief that is burdened by enforcement of the ordinance.

¶18 On this issue, the County argues that no evidence was presented to the circuit court that any tenet or principle of any religious faith "prohibits its adherents from completing" a zoning permit application or paying the application fee.

¶19 Borntreger does not present a developed argument on this issue based on the record before the circuit court. Instead, he cites passages apparently taken from the Bible, none of which, except the single quote from Romans, were presented to the circuit court (and none of which, at least on their face without further explanation, suggest a religious belief that a zoning permit application might burden). Similarly, Borntreger makes assertions about his beliefs that were not made to the circuit court. Based on his appellate brief and the record, this court could construe his failure to address the record-based argument of the County as a complete concession. *See* ***Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.***, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (a respondent's failure to dispute a proposition in the appellant's brief may be taken as a concession on that point). However, because Borntreger is representing himself and because the circuit court found merit in his argument, this court declines to take that route in resolving this appeal.

¶20 Based on the record, this court concludes that, initially, the circuit court correctly explained to Borntreger at the bench trial that the Borntreger

submission and Douglas's statement failed to describe a sincerely held religious belief burdened by the requirement that he complete the required application. Taking first the Borntreger submission, it makes no reference to any religious doctrine or belief. It appears to stand for the proposition that, because Borntreger's father and other ancestors allegedly submitted less substantial paperwork for the same type of construction project, Borntreger would like to be able to submit less substantial paperwork, and perhaps also avoid the $100 fee that his forefathers presumably also did not have to pay. It makes no apparent reference to any religious prohibition, such as against signing documents, paying government fees, or providing information to government officials.

¶21 Turning to Douglas's statement to the court, it at most added the following ideas to the Borntreger submission: (1) it "is part of their [Amish][7] religion to do things simple; and [they have] not always … conformed to the way society changes," and; (2) because it is "more complicated" to "sign building permits," Borntreger's refusal to submit an application "is related to their religion." No oral or written religion tradition is cited, beyond the general reference to "their [Amish] religion." No specific religious rule or tenet is described. In effect, Douglas generically applies the word "religion" to the same idea already expressed by Borntreger about his preference for a less complicated application process, without explaining what *religious* tenet or tradition would be burdened. Beliefs in general concepts of non-conformity or simplicity, without further explanation or specificity, are simply too general and vague to support a

[7] The record does not appear to reflect that Borntreger ever identified himself to the court as an adherent to an Amish religious order, but Douglas referred to herself as "a friend of the Amish."

finding that any particular aspect of enforcement of the zoning ordinance burdens a sincerely held religious belief. It is true that Douglas's statement adds the more specific idea of a prohibition on signing documents, but without tying this to any religious tenet or tradition. Given that the Borntreger submission makes no reference to such a prohibition—and, to the contrary, contains Borntreger's signature on a document that he apparently submitted in lieu of a more complete zoning application—further evidence of, and explanation of, any signature prohibition would have been required to support a valid, religion-based affirmative defense on this basis.

¶22 Based on the record, this court also concludes that the circuit court erred when it reversed course, as a result of the short statement made by the unidentified speaker.[8] This statement can be broken down into four components:

(1) Further "applications will just follow from one to another";

(2) Scripture from the Holy Bible, *Romans* 12:1-2 (King James), states the following, which matches fairly closely the words spoken in court by the unidentified speaker, in support of his apparent position that this scripture reflects the relevant religious briefs asserted by Borntreger:

[8] The statement was not sworn testimony and came from a person who did not identify himself by name, religious title, or affiliation, or give any description of his background or any association he had with Borntreger. Douglas's statement was also unsworn. As to the form of these statements, although it might be questioned whether either constituted admissible evidence before the circuit court, the court appeared to treat them as such, and the County did not object. Therefore, this court will assume without deciding that the statements were validly before the circuit court as evidence. More generally, however, while it is impossible to determine from the record what might have been added to the record by more formal or extensive presentations, the informality and brevity of the statements of Douglas and the unidentified speaker contributed to the inadequacies of the record.

> [1] I beseech you therefore, brethren, by the mercies of God, that ye present your bodies a living sacrifice ["example" instead of "sacrifice" in the statement made by the unidentified speaker], holy, acceptable unto God, which is your reasonable service.
>
> [2] And be not conformed to this world: but be ye transformed by the renewing of your mind, that ye may prove what is that good, and acceptable, and perfect, will of God.

(3) "With all the permits that are coming up we got to draw a line, and it's going to affect our establishment of our order."

(4) "[T]hese ordinance and requirements" may not be "law," but instead are "just ordinance and requirements."

¶23 The first, third, and fourth propositions presented by the unidentified speaker do not appear to convey any particular religious doctrine or principle, at least not without further explanation. Instead, at best they echo the concept already conveyed to the court by Borntreger and Douglas, to the effect that Borntreger objects to what he perceives to be a modern process that his forefathers did not have to follow, while also adding concerns that complying with one requirement not imposed on one's forefathers will only lead to complying with further such requirements, and that the ordinance is not actually a "law" in some sense that the speaker did not explain.

¶24 This leaves the second proposition: the biblical reference. The first sentence of this passage, to the effect that bodies should be living examples acceptable to God, does not, at least on its face, refer to a prohibition against any activity. The second sentence does convey the idea of a prohibition, through use of the following very broad phrase: "And be not conformed to this world." In addition, Douglas used the same word, "conformed," in saying: "[They have] not

always … conformed to the way society changes." However, neither Douglas nor the unidentified speaker said what may not be "conformed" to what. That is, even assuming that they were accurately summarizing a sincere, religious belief held by Borntreger, this means only that Borntreger had a religious belief that he should not "conform" in some unspecified manner to unspecified rules or requirements. This could mean almost anything.

¶25 The circuit court concluded that it had sufficient evidence in the record to consider Borntreger's objection to filing an application to be based on one or more tenets of an Amish religious order. However, neither Borntreger, Douglas, the unidentified speaker, nor the circuit court ever stated clearly what religious tenet, tradition, belief, or proscription Borntreger allegedly acted on in refusing to comply with any particular aspect of the ordinance or its enforcement, so that the court could properly analyze whether a sincerely held religious belief would be burdened by any aspect of the ordinance or its enforcement.

¶26 This contrasts sharply with the evidence presented in ***Wisconsin v. Yoder***, 406 U.S. 205 (1972), *affirming* ***State v. Yoder***, 49 Wis. 2d 430, 182 N.W.2d 539 (1971), which involved a challenge by Amish to the applicability of Wisconsin's compulsory education law. In that case, expert testimony was presented on the religious beliefs and tenets of the Old Order Amish. ***State v. Yoder***, 49 Wis. 2d at 435-36; *see also* ***State v. Miller***, 202 Wis. 2d 56, 60, 549 N.W.2d 235 (1996) (describing in detail the nature of Amish religious objections to statute requiring display of an emblem on slow-moving vehicles). Indeed, the United States Supreme Court noted in ***Wisconsin v. Yoder*** that the evidence included "expert witnesses [who were] scholars on religion and education" who presented the history of the Amish people "in some detail, beginning with the Swiss Anabaptists of the 16th century." ***Wisconsin v. Yoder***, 406 U.S. at 209-10.

The Supreme Court's treatment of the details could be called exhaustive. *See* ***id.*** at 209-13. While it may be doubtful that expert testimony is necessary, since courts are to avoid focusing on "the place of a particular belief in a religion or the plausibility of a religious claim," *see* ***Employment Div., Dep't of Human Res. of Or. v. Smith***, 494 U.S. 872, 887 (1990), the problem here is that there is no specific evidence from which it can be inferred that any aspect of the zoning ordinance or its enforcement burdens one or more sincerely held religious beliefs of Borntreger.

¶27 For the most part, Borntreger's briefing on appeal serves to highlight the lack of sufficient evidence rather than to explain whether or how there is any significance to what little evidence there was. For example, he compares the County forcing him to submit a zoning permit application to "forcing a Muslim to eat pork," but without explaining in a coherent way what it is about the permit process that violates any particular religious tenet.[9] The clarity of the Islamic prohibition against pork consumption serves only to highlight the lack of clarity in Borntreger's assertions, even the assertions that he now makes in a brief that is not

[9] This court's reference to the lack of a "coherent" explanation in the text refers only to the absence of a logical legal argument, properly focused on the record before the circuit court in light of the applicable legal standards, not to any religious belief Borntreger might actually hold. This court is mindful of the observation of the United States Supreme Court that "[t]he determination of what is a 'religious' belief or practice" "is not to turn upon a judicial perception of the particular belief or practice in question; religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." ***Thomas v. Review Bd. of the Ind. Emp't Sec. Div.***, 450 U.S. 707, 714 (1981); *see also* ***United States v. Seeger***, 380 U.S. 163, 184-85 (1965) ("As Mr. Justice Douglas stated in ***United States v. Ballard***, 322 U.S. 78, 86, 88 L. Ed. 1148, 1154, 64 S. Ct. 882 (1944): 'Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others.' Local boards and courts in this sense are not free to reject beliefs because they consider them 'incomprehensible.' Their task is to decide whether the beliefs professed by a registrant are sincerely held and whether they are, in his own scheme of things, religious.").

properly constrained by references to the record as it existed before the circuit court. The County fairly characterizes Borntreger's core argument on appeal as an assertion that *every* new law (however "new" may be defined), conflicts with his religious convictions because his forefathers did not have to comply with *any* such laws, without regard to any particular religious tenet and regardless of the specific requirements of any "new" law.

¶28 The record here differs markedly from the one found adequate in ***Thomas v. Review Board of Indiana Employment Security Division***, 450 U.S. 707 (1981). There, a Jehovah's Witness requested a layoff from his manufacturing job and unemployment compensation benefits after being transferred to a department that supplied military armaments, on the grounds that the work violated his religious principles. ***Id.*** at 710-11. The Indiana Supreme Court called the choice a "personal philosophical" one, citing inconsistencies in his explanation of his beliefs, his practice of them, and the fact that other Jehovah's Witnesses testified that working on armaments was "scripturally acceptable." ***Id.*** at 714. The Supreme Court reversed, explaining that when a plaintiff draws such a line, "it is not for us to say, that the line he drew was an unreasonable one." ***Id.***

¶29 Here, it is not a question of whether Borntreger holds beliefs that are internally consistent or consistent with beliefs of fellow adherents to his religion. It is a question of whether the court had before it an adequate record to conclude that enforcement of the zoning ordinance burdened Borntreger's sincerely held religious belief or beliefs. This court concludes only that the record was inadequate, not that the record demonstrates that Borntreger is not generally sincere in holding religious beliefs to which Douglas and the unidentified speaker attempted to make reference. *Cf.* ***id.*** at 716 ("Courts are not arbiters of scriptural

interpretation."); *see also* ***Love v. Reed***, 216 F.3d 682, 688 (8th Cir. 2000) (rejecting challenge to sincerity of inmate's religious beliefs due to his lack of knowledge of scripture, noting that "[w]e would not deny that a Jew's desire to keep Kosher is rooted in religion even if he were not a Rabbinical scholar capable of explaining the more subtle spiritual aspects of Judaism").

¶30 While prompted by the unidentified speaker's statement, it is possible that the circuit court may have rested its decision at least in part on its own familiarity with the cited Bible passage or with related passages, with Borntreger, or more generally with Amish beliefs that the court believed could be readily attributed to Borntreger. However, to the extent this occurred, it would not be appropriate or fair to the County for this court to assume background knowledge that the court may or may not have used to make implied findings or conclusions regarding the nature of the religious belief at issue and whether enforcement of the zoning ordinance could reasonably be said to burden it. The court did not purport to take judicial notice of any adjudicative facts pursuant to WIS. STAT. § 902.01.

¶31 It is also possible that the circuit court might have concluded that a generic statement that opposition to a law rests on a sincerely held religious belief is in itself sufficient to shift the burden to the government. If so, this would have been incorrect.

¶32 In short, Borntreger failed to provide the circuit court with sufficient evidence to support a finding that the zoning ordinance burdened any sincerely held religious belief. This court therefore need not and does not address the second half of the test summarized in ***Noesen***.

CONCLUSION

¶33 For these reasons, this court reverses the judgment dismissing the County's forfeiture action against Borntreger and remands for further proceedings consistent with this opinion.

By the Court.—Judgment reversed and cause remanded.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.